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IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY REQUEST FOR
APPROVAL OF UPDATED GREEN POWER
RATE SCHEDULE GPS-1, GPS-2, AND
GPS-3.

Docket No. E-01345A-10-0394

IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY
FOR APPROVAL OF ITS 2013 RENEWABLE
ENERGY STANDARD IMPLEMENTATION
FOR RESET OF RENEWABLE ENERGY
ADJUSTOR.

Docket No. E-01345A-12-0290

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY
FOR APPROVAL OF ITS 2013 RENEWABLE
ENERGY STANDARD IMPLEMENTATION
PLAN AND DISTRIBUTED ENERGY
ADMINISTRATIVE PLAN AND REQUEST
FOR RESET OF ITS RENEWABLE ENERGY
ADJUSTOR.

Docket No. E-01933A-12-0296

IN THE MATTER OF THE APPLICATION OF
UNS ELECTRIC, INC. FOR APPROVAL OF
ITS 2013 RENEWABLE ENERGY
STANDARD IMPLEMENTATION PLAN AND
DISTRIBUTED ENERGY ADMINISTRATIVE
PLAN AND REQUEST FOR RESET OF ITS
RENEWABLE ENERGY ADJUSTOR.

Docket No. E-04204A-12-0297

RUCO'S REPLY BRIEF

1 The RESIDENTIAL UTILITY CONSUMER OFFICE ("RUCO") hereby submits its
2 Reply Brief in the above matters. RUCO will address only those arguments made by other
3 parties in opposition to RUCO's recommendations.

4 RUCO would like to point out that RUCO's Baseline Proposal appears to have the
5 most widespread acceptance of any proposal.¹ As RUCO intended, there are some
6 aspects that will require additional attention, but on the whole the Baseline proposal is
7 popular, easily workable and will not impair the integrity of Arizona's RECs. RUCO
8 reiterates its chief concerns here – RUCO is deeply concerned that a solution be approved
9 that does not burden ratepayers and that does not affect the integrity of the RECs. While
10 there have been several areas of concern raised by other parties concerning RUCO's
11 Baseline proposal, all of which can easily be addressed, no critical party addresses, or
12 refutes the fact that RUCO's proposals according to CRS will allow Arizona's RECs to
13 remain viable in the voluntary market. RUCO's proposals if implemented as intended will
14 not result in double counting under CRS's view, unlike most of the other proposals, which
15 RUCO believes should be a non-starter with the Commission.

16 RUCO is recommending the Commission wait until the imminent net metering
17 issues are resolved and as a backstop adopt either its Baseline Proposal or its Sharing
18 Proposal. However, at this point in time, given the comments and positions of all of the
19 parties, RUCO's Sharing proposal is only meant to be an alternative to RUCO's Baseline
20 Proposal. Therefore, RUCO is recommending that the Commission approve its Baseline
21 Proposal. Should the Commission not approve the Baseline Proposal, RUCO is then
22 recommending as an alternative, its Sharing proposal.

23 ¹ APS, TEP & NRG oppose it

1 **RUCO'S BASELINE PROPOSAL IS NOT COMPLICATED**

2 A criticism voiced by several parties is that RUCO's Baseline Proposal is too
3 complicated. On the contrary – it is not complicated. RUCO's Baseline Proposal is simply
4 a waiver with a metric. The metric was not defined on purpose. It was RUCO's intent to
5 make its definition collaborative. It does not have to be as complicated as some would like
6 to believe. For example, the threshold can be based on historical market demand. If the
7 market installs within 15 percent of the average yearly market demand within a year, then
8 the waiver is granted – it can be as simple as that. This also means that the process can
9 be timed to perfectly correspond with the yearly implementation plans.

10 Moreover, it can hardly be argued that RUCO's Baseline proposal is complicated
11 when one considers some of the suggested alternatives. A Rule change is always
12 complicated, procedurally and in execution. A Rule change on the subject at issue would
13 by no means be simple and it surely would be take a long time. Even Staff's proposal
14 likely requires a Rule change. (Transcript at 779)

15 By comparison, RUCO's Baseline proposal is one of the least complicated
16 proposals because it does not result in a claim on the RECs. The market uncertainty and
17 fall-out from having Arizona's RECs invalidated would bring much complexity and market
18 uncertainty. In that regard, RUCO's Baseline Proposal is worth the extra effort.

19
20 **RUCO'S REPLY TO APS**

21 APS, as far as RUCO can tell from its Brief, appears to grossly misunderstand
22 RUCO's baseline proposal. There are a number of wrong assumptions. First, it would not
23 be the utilities, but the Commission that would decide whether there is enough DG

1 installed to meet the DG carve-out. The implications of not hitting the threshold are
2 identical to a situation of under compliance today or even as envisioned in Staff's option
3 which APS now supports. APS Brief at 7. Second, if the level of DG installation did not
4 occur, the utilities would not have to step in unless the Commission orders them to do so.
5 APS Brief at 7. Third, the Baseline Proposal would not wind up guaranteeing a specific
6 level of DG market activity. It would be ultimately up to the Commission to determine the
7 remedy if the Company does not meet the threshold – which is again exactly how Staff's
8 proposal works – if the Company is under compliance with the RES standard, the
9 Company goes back to the Commission who determines what to do. Fourth, RUCO never
10 stated that its objective with the Baseline Proposal was to spur market activity. RUCO's
11 objective is to provide a solution that will not jeopardize the integrity of Arizona's RECs and
12 not burden ratepayers. Fifth, RUCO did, in fact, give the answers that APS is critical of
13 and argues must be resolved. RUCO's purpose was to be corroborative and get the
14 parties together to work out some of the finer details. APS posits RUCO's answers and its
15 attempt to be corroborative as something almost to be feared rather than respected as a
16 solution that involves many diverse interests.

17 Ironically, APS now supports Staff's position which would require a waiver to start
18 the year, then a measurement of eligible kWh at the end of the year, followed by an exact
19 subtraction from the REST in yet another more specific waiver. All of this would likely end
20 in a reopening of the rules. (Transcript at 779). But perhaps the biggest problem with
21 Staff's proposal is that CRS, the agency tasked with certifying RECs, has determined that
22 Staff's proposal would make a claim on the REC. Transcript at 823. The Commission
23 should not approve a proposal that would lead to forfeiting Arizona's opportunity to

1 participate in the voluntary market. RUCO's proposal is not so complicated. It maintains
2 the integrity of the RECs and would allow for a REC market and the continuation of
3 government installations in Arizona. The Commission should adopt RUCO's Baseline
4 Proposal.

5 **RUCO'S REPLY TO NRG**

6 NRG argues that both RUCO's Sharing Proposal and Baseline Proposal have
7 serious flaws. NRG Brief at 9. The problem with the Sharing Proposal is it would be unfair
8 to non-commercial generators and would place the burden on commercial generators to
9 prove that the RECs are required for another purpose. First, RUCO rejects the notion that
10 showing documentation of an internal standard will be burdensome. Of all the steps that
11 one must take to install on a solar energy system from permitting to engineering and
12 inspection, sending in an organizational policy should be manageable. Second, since the
13 residential class is not as advanced as commercial in terms of REST targets RUCO feels
14 comfortable in the equity of a 50/50 share. Most importantly, the Sharing Proposal, like the
15 Baseline Proposal will also not result in a claim on the REC. NRG, perhaps more than
16 most of the parties in this docket should appreciate RUCO's concern here to preserve the
17 integrity of the RECs – according to NRG "Preserving the value of the Commercial RECs
18 through CRS certification is critical to NRG Solar and other participants in the commercial
19 DE market." NRG Brief at 7.

20 Like APS, NRG over complicates RUCO's Baseline Proposal. By adding a sense of
21 confusion, NRG undermines RUCO's proposal. Nothing is complex about the concept of
22 setting a benchmark by which to judge the market. Doing this does not "rewrite" the REST
23 rules. Moreover, it is hardly "vague." The only part of the proposal that requires attention
24

1 is at what level to set the threshold. Given NRG willingness for a Rule change, setting up
2 what can be a one-time benchmark should be very straightforward.

3 Again, it is as simple as a Staff report which recommends the market level of activity
4 threshold and a waiver for any utility that meets the threshold. Thresholds and standards
5 are commonplace in this area of utility regulation. Measuring market activity should not be
6 a difficult task. Beyond that, RUCO is recommending a waiver for those utilities that
7 comply and the Commission can fashion its own remedy for those that do not – which is
8 what the Commission does where there is noncompliance with most Commission
9 standards including the RES standard.

10 NRG should be the one of the last parties to complain about a complex proposal.
11 NRG is recommending a Rule change without a specific policy in mind, which is not a
12 simple process or task under any situation. NRG Brief at 1. Moreover, NRG should not
13 complain about undermining the purpose of the RES rules as NRG is recommending an
14 indiscriminate waiver. NRG Brief at 1. NRG's waiver is "temporary" which would likely
15 bring with it uncertainty and perhaps years of built up under compliance as Arizona waits
16 for Rule change. Finally, not all of the solar industry feels as NRG does about RUCO's
17 Baseline Proposal. The Solar Energy Industry Association, which is made up of many
18 solar companies, supports RUCO's Baseline Proposal if an action is to be taken. SEIA
19 Brief at 3. NRG has yet to explain how it would make planning difficult. It is simply an
20 earned waiver for the utility. It does not mean NRG cannot install solar if the commission
21 grants a waiver. There are yearly implementation plans which often times have significant
22 impacts on the market. It is in that process that the real complicated work of setting
23 incentives and making policy calls happen.

1 Contrary to NRG's claim, RUCO does not support APS's proposal to strike the DG
2 carve-out. RUCO also highly doubts that Staff would support it. In Staff's view, setting
3 aside the DE carve out would be a substantive change to the Commission's policy to
4 codify the DE carve out in the REST rules, would not address Staff's desire to have the
5 rest compliance reports reflect the reality of how much electric load is served by renewable
6 energy, and it would result in *de facto* increase of the REST. S-1 at 4-5. Moreover, it
7 clearly violates one of staff's principles of being minimally invasive to the REST. Staff has
8 testified that its goal is to be minimally invasive to the REST rules. S-1 at 9. NRG also
9 completely ignores RUCO's primary position which is to allow a reasonable window of time
10 for the upcoming net metering discussion to resolve the issue.

11 Again, the Baseline Proposal is simple, less complicated than a RES
12 implementation plan, and subject to the input of all stakeholders. Imagine the
13 complications and debate that could arise if the Commission arbitrarily issues waivers
14 each year for instance. RUCO is surprised that some parties would rather opt for a Rule
15 change rather than wait for a decision on net metering which might only be a month away.
16 For this reason and others, RUCO recommends the Commission adopt its policy solution.

17 18 **RUCO'S REPLY TO WESTERN RESOURCE ADVOCATES**

19 WRA is critical of RUCO's Sharing proposal inferring that the proposal may amount
20 to a taking. WRA misinterpreted Mr. Huber's testimony regarding a "stick" approach.
21 WRA Brief at 19. Mr. Huber did not say such an approach is necessary. In fact, Mr. Huber
22 testified that RUCO was not even envisioning a payment. Transcript at 609. If a customer
23 did not want to give up the other half of his/her RECs, one possibility would be a small

1 payment (such as the opt-out rate for the LFCR). Again, this could be addressed as part
2 of a joint effort, but the Rules do require that a transfer occur. Transcript at 610.

3 RUCO's sharing proposal was made with the spirit that both the utility and the
4 owner/investor work together to bring DE technology online. RUCO-1 at 8. The Sharing
5 Proposal would present little to no additional cost to ratepayers, would apply statewide,
6 would help solve compliance concerns within a reasonable time frame, would align owner
7 and utility interests, help maintain property rights and would also align with the upcoming
8 net metering decision. RUCO-1 at 9.

9 WRA has a better feeling with RUCO's Baseline Proposal. WRA Brief at 21. WRA
10 believes RUCO's Baseline Proposal may be acceptable but setting the baseline could be a
11 difficult process. WRA Brief at 21. Again, setting the Baseline Standard is as difficult as
12 the Commission wants to make it. If the standard is determined by Staff and
13 recommended to the Commission with parties able to comment, setting the standard will
14 be a type of task that Staff otherwise does in the normal course of its business. Staff is
15 often tasked with looking at data and coming up with a baseline threshold in utility
16 regulation. In the realm of the REST and the Energy Efficiency Plans, Staff often proposes
17 a recommended threshold on a subject.

18 **RUCO'S REPLY TO STAFF AND OTHER CONCERNS**

19 RUCO would like to address a few other concerns. First, there is a concern about
20 the Baseline proposal not having a direct linkage between the amount of renewable energy
21 deployed in Arizona and the compliance Rule. Transcript at 693. RUCO submits that the
22 Baseline proposal can get a 99 percent linkage, if so desired; however, the Commission's
23 accounting system is not 100 percent accurate anyway. Take for example how solar hot

1 water systems are rated toward the REST. The ACC does not require a BTU meter on
2 residential solar hot water systems. Therefore, it is an educated guess as to the output.
3 There is certainly a margin of error there greater than 1 percent.

4 Second, there is further concern that RUCO's proposal may be problematic in
5 regard to how it relates to the annual cycle of the Commission's REST plan consideration.
6 Staff Brief at 9. Again, an easy "problem" to solve - the Commission could start monitoring
7 the market at mid-year or Q3, thus a full year of observation would pass by the time the
8 implementations plans were approved. This would provide time for Staff to make their
9 recommendation to the commission if a waiver is indeed justified.

10 Third, an argument has been made that seems to imply that there is a small DG
11 REC market and it is acceptable to take or count RECs either implicitly or explicitly without
12 the other party's consent. There has been some public comment which suggests there is a
13 market.² Next, just because there may not be a robust trading network now, does not
14 mean Arizona should prevent a market from forming.

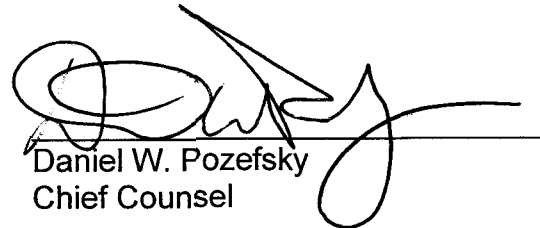
15 Finally, while it may be convenient for some parties to portray CRS as a radical
16 "California non-profit," the Department of Defense also clearly values RECs (even if there
17 is not a robust trading market) and their ability to rely on the integrity of their RECs drives
18 millions of dollars of investment in Arizona. Why would Arizona want to turn down out-of-
19 state investment in Arizona and push back against military bases and hospitals becoming
20 more self-sufficient for their energy needs?

21
22
23 ² Also see <http://www.trec-us.com>

1 **CONCLUSION**

2 For all of the above reasons the Commission should adopt RUCO's recommendations.

3
4 RESPECTFULLY SUBMITTED this, 13th day of September, 2013.

5
6 
7 Daniel W. Pozefsky
8 Chief Counsel
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